

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

CALVIN DWIGHT WARE

Petitioner,

v.

Case No. 06-CV-10553-DT

SHIRLEE A. HARRY,

Respondent.

**OPINION AND ORDER ADOPTING THE MAGISTRATE JUDGE’S REPORT AND
RECOMMENDATION, DENYING IN PART THE PETITION FOR HABEAS CORPUS
AND REFERRING THE MATTER FOR AN EVIDENTIARY HEARING**

Pending before the court is Petitioner Calvin Dwight Ware’s petition for writ of habeas corpus under 28 U.S.C. § 2254. This matter was referred to United States Magistrate Judge Paul J. Komives pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.1. In his Report and Recommendation (“R&R”), the magistrate judge recommended that this court should (1) conduct an evidentiary hearing with respect to Petitioner’s claim that counsel was ineffective for failing to investigate and present the testimony of Ezell Robinson and (2) deny the petition in all other respects. No objections have been filed pursuant to 28 U.S.C. § 636(b)(1)(C); thus further appeal rights are waived.¹

Having reviewed the file and the R&R, the court concludes that the findings and conclusions of the magistrate judge are correct and adopts the same for purposes of this order. Accordingly,

¹ The failure to object to the magistrate judge’s report releases the court from its duty to independently review the motion. *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

IT IS ORDERED that the December 14, 2007 R&R [Dkt. # 22] is ADOPTED IN FULL AND INCORPORATED BY REFERENCE.

IT IS FURTHER ORDERED that the petition for writ of habeas corpus [Dkt # 1] is DENIED IN PART. Specifically, the petition is denied as to Petitioner's confrontation claim, jury instruction claim and sufficiency of the evidence claim.

IT IS FURTHER ORDERED that, for the reasons set forth in the R&R, this matter is referred to Magistrate Judge Paul J. Komives to appoint counsel for the petitioner and conduct an evidentiary hearing regarding Petitioner's remaining claim of ineffective assistance of counsel.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: April 21, 2008

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, April 21, 2008, by electronic and/or ordinary mail.

s/Lisa G. Wagner
Case Manager and Deputy Clerk
(313) 234-5522